

JUL 25 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALLAN ELIAS,

Appellant,

V.

SCOTT K DOMINGUEZ, through Jackie
Hamp, his guardian and conservator;
JACKIE HAMP,

Appellees.

No. 04-35538

D.C. No. CV-04-00067-
RRB(BLW)

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Idaho
Ralph R. Beistline, District Judge, Presiding

Argued and Submitted March 10, 2006
Portland, Oregon

Before: BRUNETTI, TASHIMA, and PAEZ, Circuit Judges.

Allan Elias (“Elias”) appeals from a district court order upholding a
bankruptcy court finding that a state court judgment owed to Scott Dominguez

^{*} This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

(“Dominguez”) was non-dischargeable in Chapter 7 bankruptcy. Since the facts of the case are well known to the parties, we will not recite them here. We affirm.

The bankruptcy court, and this Court, must give an Idaho court judgment the same preclusive effect that Idaho courts would give to the judgment. *See* 28 U.S.C. § 1738. Under Idaho law, five factors must be shown for issue preclusion to apply: (1) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation *Rodriguez v. Dep’t of Correction*, 29 P.3d 401, 404 (Idaho 2001). Elias argues that issue preclusion does not apply because the state court lacked subject matter jurisdiction, and therefore its judgment was not final. However, the Idaho Supreme Court upheld the jurisdiction of the state trial court in *Dominguez v. Evergreen Resources, Inc.*, 121 P.3d 938, 944 (Idaho 2005), and therefore the state court judgment is final. *See E. Idaho Agric. Credit Ass’n v. Neibaur*, 987 P.2d 314, 320 (Idaho 1999). We affirm the district court order upholding the bankruptcy

court finding that the state court judgment owed to Dominguez was non-dischargeable.

Dominguez's motion to dismiss this appeal for lack of jurisdiction is denied because bankruptcy dischargeability proceedings are not subject to the *Rooker-Feldman* doctrine. *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 871 (9th Cir. 2005).

We AFFIRM the district court order upholding the bankruptcy court decision and DENY Dominguez's motion to dismiss the appeal for lack of jurisdiction.